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Supreme Court of the United States

OCTOBER TERM, ~~1952~~ 1953

No. _____, Original

STATE OF ARKANSAS

Complainant

vs.

STATE OF TEXAS, ET AL.,

Defendants

REPLY BY THE STATE OF ARKANSAS TO THE DEFENDANTS' RETURN TO THE RULE TO SHOW CAUSE

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TABLE OF AUTHORITIES

CASES

	Page
Alcazar Amusement Co. v. Mudd & Colley Amusement Co., 204 Ala. 509, 86 So. 209 (1920)	5
Angle v. Chicago, St. Paul & C. Railway, 151 U.S. 1, 13-15, 14 S. Ct. 240 (1894)	5
Bitterman v. Louisville & Nashville R.R., 207 U.S. 205, 28 S. Ct. 91 (1907)	5
California v. Southern Pacific Co., 157 U.S. 229, 15 S. Ct. 591 (1895)	7
Dr. Miles Medical Co. v. Park & Sons Co., 220 U.S. 373, 394-95, 31 S. Ct. 376 (1911)	5
Dyer v. Sims, 341 U.S. 22, 71 S. Ct. 577 (1951)	3, 10
E. L. Husting Co. v. Coca Cola Co., 194 Wis. 311, 216 N.W. 833 (1927), 205 Wis. 356, 238 N.W. 626 (1931), cert., denied, 285 U.S. 538, 52 S. Ct. 311 (1932)	5
Georgia v. Chattanooga, 264 U.S. 472, 44 S. Ct. 369 (1924)	9
Georgia v. Pennsylvania R. Co., 324 U.S. 439, 463-64, 65 S. Ct. 716 (1945)	7
Hansen v. Taylor Beverage & Candy Co., 227 Wis. 140, 227 N.W. 115 (1938)	5
Hinderlider v. La Plata Co., 304 U.S. 92, 110	10
Kentucky v. Indiana, 281 U.S. 163, 50 S. Ct. 275 (1930)	3, 9, 12
Lumley v. Gye, 2 E. & B. 216, 118 Eng. Rep. (Q.B. 1853)	4
Massachusetts v. Missouri, 308 U.S. 1, 17-20, 60 S. Ct. 39 (1939)	9
National Licorice Co. v. Labor Board, 309 U.S. 350, 363-64, 60 S. Ct. 569 (1940)	6
Nokol Co. v. Becker, 318 Mo. 292, 300 S.W. 1108 (1927)	5

Oklahoma v. **Cook,** 304 U.S. 387, 58 S. Ct. 954 (1938) 9

Oklahoma v. **Texas,** 253 U.S. 465, 471, 40 S. Ct. 580 (1920), and 258 U.S. 574, 581, 42 S. Ct. 406 (1922) 6, 8

Texas v. **Florida,** 306 U.S. 398, 405, 59 S. Ct. 563 (1939) 4, 8, 11, 12

Texas v. **White,** 7 Wall. 700 (1868) 12

TREATISES

Annotation, "Liability of One Who Induces or Causes Third Person Not to Enter Into or Continue a Business Relation with Another," 9 A. L. R. 2d. 228 4

Annotation, "Liability for Procuring Breach of Contract," 84 A. L. R. 43 4

LAW REVIEW ARTICLES

Carpenter, "Interference with Contract Relations," 41 Harv. L. Rev. 728 (1928) 4

STATUTES

28 U.S.C. § 1251 (a) (1) 7, 10

28 U.S.C. § 1251 (b) (3) 10

28 U,S.C. § 2201 12

28 U.S.C. § 2283 10

POINTS OF ARGUMENT

Page

I. LEAVE TO FILE SHOULD NOT BE DENIED BECAUSE OF THE ABSENCE OF THE WILLIAM BUCHANAN FOUNDATION AS A PARTY. THE WILLIAM BUCHANAN FOUNDATION IS NOT AN INDISPENSABLE PARTY TO THIS ACTION. 2

II. THE DEFENDANTS HAVE RAISED VARIOUS QUESTIONS CONCERNING THE LEGAL CONSEQUENCES WHICH WOULD RESULT IF THE WILLIAM BUCHANAN FOUNDATION WERE A PARTY TO THIS ACTION. THE WILLIAM BUCHANAN FOUNDATION IS NOT A PARTY TO THIS ACTION, AND ACCORDINGLY THESE QUESTIONS ARE NOT RELEVANT TO DECIDING THE MOTION FOR LEAVE TO FILE THE COMPLAINT. 7

III. NO BASIS EXISTS FOR DENYING LEAVE TO FILE THE COMPLAINT AS A MATTER OF SOUND EQUITABLE DISCRETION. MOREOVER, TO DENY LEAVE ON SUCH GROUNDS WOULD BE TO UNDERMINE THE ACTION OF CONGRESS IN VESTING EXCLUSIVE JURISDICTION IN THE SUPREME COURT. 9

IV. ARGUMENTS CONCERNING THE PRECISE SCOPE OF RELIEF WHICH SHOULD BE GRANTED ARE NOT REVELANT TO DECIDING THE MOTION FOR LEAVE TO FILE THE COMPLAINT. 10

Supreme Court of the United States

OCTOBER TERM, 1952

No. _____, Original

STATE OF ARKANSAS

Complainant

vs.

STATE OF TEXAS and JOHN BEN SHEPPARD,
Attorney General of Texas,

Defendants

REPLY BY THE STATE OF ARKANSAS TO THE DEFENDANTS' RETURN TO THE RULE TO SHOW CAUSE

On June 25, 1953 the defendants—the State of Texas and the Attorney General of the State of Texas—filed a return to this Court's rule to show cause why the motion of the State of Arkansas for leave to file the complaint should not be granted. In that return, and in their supporting brief, the defendants prayed that the rule be discharged and that leave to file the complaint be denied.

In reply thereto the State of Arkansas respectfully makes the following submission to this Court. In making this submission the State of Arkansas once more requests that leave to file the complaint be granted so that the State of Arkansas may have its day in court on the serious controversy which presenlty exists between the State of Arkansas and the State of Texas.

I.

LEAVE TO FILE SHOULD NOT BE DENIED BECAUSE OF THE ABSENCE OF THE WILLIAM BUCHANAN FOUNDATION AS A PARTY. THE WILLIAM BUCHANAN FOUNDATION IS NOT AN INDISPENSABLE PARTY TO THIS ACTION.

In their return the defendants have urged that the William Buchanan Foundation is an indispensable party to this action, and that leave to file the complaint should accordingly be denied because the William Buchanan Foundation has not been made a party.

In view of the nature of the cause of action set forth in the complaint, such a contention is without merit and is contrary to accepted principles of law. Under these accepted principles of law it is clear that the William Buchanan Foundation is not an indispensable party to this action.

The State of Arkansas is seeking judicial relief in this controversy in order to prevent the State of Texas from continuing a course of action which is inflicting grave injury upon the interests of the State of Arkansas. As is set forth in the complaint, the State of Arkansas through its instrumentality the University of Arkansas, entered into a contract with the William Buchanan Foundation whereby the Foundation became obligated to pay $500,000 toward the construction of a specially added pediatric floor in a new charity hospital to be constructed at the State of Arkansas Medical Center at Little Rock, Arkansas. This contract was valid when entered into; it is valid today. In reliance thereon the State of Arkansas has proceeded with the construction of the hospital and has in every way performed its part of the contract.

When the motion for leave to file the complaint was submitted to this Court, construction of this charity hospital at the State of Arkansas Medical Center had already reached the point where the funds agreed to be paid by the William Buchanan Foundation were due and payable. The reason why payment had not been made by the William Buchanan Foundation was that the State of Texas and its Attorney General, the defendants herein, had illegally and in violation of the rights of the complainant instituted an action in state court in Texas, contending that the contract was not a proper expenditure by the William Buchanan Foundation. This contention by the defendants was without legal justification: and it was based on purported interpretations and applications, likewise without legal justification, made by the defendants with respect to the trust indenture and the charter of the William Buchanan Foundation. The actions of the defendants constitute an unwarranted and unlawful interference by the defendants with valid contractual rights vested in the State of Arkansas, thus inflicting upon the State of Arkansas the grave and irreparable injury described in the complaint. Compare **Kentucky** v. **Indiana,** 281 U.S. 163, 50 S. Ct. 275 (1930); **Dyer** v. **Sims,** 341 U.S. 22, 71 S. Ct. 557 (1951).

In order to vindicate its rights and to protect its interests from this harm caused by the actions of the defendants, the State of Arkansas has asked leave to institute this action in the Supreme Court of the United States—which is the tribunal invested by the Constitution and the Judicial Code with the authority and the responsibility to determine actual cases and controversies arising between two States. The controversy which here exists between the State of Arkansas and the State of Texas is not hypothetical and abstract, but

real and immediate. The injury being inflicted upon the State of Arkansas by the State of Texas is not problematical or merely in future; it is presently being sustained and is drastic in its consequences. The actions of the State of Texas are wrongful and, as appears from the authorities cited in the complainant's brief in support of the motion the motion for leave to file, they are a proper subject for redress in this Court at the suit of the State of Arkansas. Without question they will "afford an adequate basis for relief according to accepted doctrines of the common law or equity systems of jurisprudence, which are guides to decision of cases within the original jurisdiction of this court." **Texas v. Florida**, 306 U.S. 398, 405, 59 S. Ct. 563 (1939).

The argument by the defendants that the William Buchanan Foundation is an indispensable party misconceives both the nature of the wrong alleged and the nature of the relief being sought. Beginning with the leading English case of **Lumley v. Gye**, 2 E. & B. 216, 118 Eng. Rep. 749 (Q.B. 1853), there has developed a general doctrine—which was quickly received into American law—that a plaintiff may obtain judicial relief against a defendant who, without legal justification, has interfered or is interfering with the plaintiff's contractual relations with a third person. Such judicial relief may be had at law or in equity, as appropriate in the particular case, and it is commonplace to find that the third person is not joined as a party to the action.[1] This doctrine in the law has been fully recognized by the

1. A vast number of illustrative cases is collected in Annotation, "Liability for Procuring Breach of Contract", 94 A.L.R. 43; Annotation, "Liability of One Who Induces or Causes Third Person Not to Enter Into or Continue a Business Relation with Another", 9 A.L.R. 2nd 228; Carpenter, "Interference with Contract Relations", (1928) 41 Harvard L. Rev. 728.

Supreme Court of the United States. Angle v. Chicago, St. Paul &c. Railway, 151 U.S. 1, 13-15, 14 S. Ct. 240 (1894); Bitterman v. Louisville & Nashville R.R., 207 U.S. 205, 28 S. Ct. 91 (1907); see also Dr. Miles Medical Co. v. Park & Sons Co., 220 U.S. 373, 394-95, 31 S. Ct. 376 (1911). It provides appropriate guidance in the present controversy.

In the cases referred to, the absence of the third person (in the present case this would be the William Buchanan Foundation) has presented no obstacle to granting relief to the plaintiff (here the State of Arkansas) against the defendant (here the State of Texas and its Attorney General) who was wrongfully interfering with the plaintiff's contractual relationship with the thrid person. Nor, as the Bitterman case demonstrates (207 U.S. at 220-22), has the absence of the third person prevented the Court from considering and rejecting on the merits a contention by the defendant that the plaintiff's contract with the third person was illegal.

Attention is also invited to cases in the highest courts of the States, holding that in an action to enjoin a defendant from wrongful interference with the plaintiff's contractual relationship with a third person, there exists a controversy between the plaintiff and the defendant which can properly be determined without the third party being a party to the suit. E. L. Husting Co. v. Coca Cola Co., 194 Wis. 311, 216 N.W. 833 (1927), 205 Wis. 356, 238 N.W. 626 (1931), cert. denied, 285 U.S. 538 (1932); Hansen v. Taylor Beverage & Candy Co., 227 Wis. 140, 277 N.W. 115 (1938); Nekol Co. v. Becker, 318 Mo. 292, 300 S.W. 1108 (1927); Alcazar Amusement Co. v. Mudd & Colley Amusement Co., 204 Ala. 509, 86 So. 209 (1920). In the last case cited the Supreme Court of Alabama held that (204 Ala. at 513):

> "The tortious wrong thus definitely threatened or consumated by a stranger to the contract is, in a distinctive sense, independent of the contract, though arising from the relation it establishes and the obligations it imposes; and hence the party whose rights under the contract are thus threatened may be entitled to the injunctive relief indicted, notwithstanding specific performance of the contract cannot be compelled because of the nature of the conrtact, or of the impracticability of judicial superintendence of its performance, or of the absence of jurisdiction over the other contracting party."

This line of cases has, moreover, been given favorable recognition by this Court in **National Licorice Co. v. Labor Board**, 309 U.S. 350, 363-64, 60 S. Ct. 569 (1940).

Particularly in the light of these authorities, the defendants' suggestion that the William Buchanan Foundation is an indispensable party is without merit.

What the complainant State of Arkansas is seeking is a judicial determination of its existing controversy with the State of Texas, so that the interference by the State of Texas with the contractual rights of the State of Arkansas will be brought to an end. It may well be true that the William Buchanan Foundation will be interested in the outcome of this controversy between the State of Arkansas and the State of Texas. But justiciable controversies between States—whether they are over boundaries, or over water rights, or over contract rights, or involve some other subject matter—frequently are controversies in which third persons have some definite interest, an interest which would be sufficient to support an application for intervention if made. See **Oklahoma v. Texas**, 253 U.S. 465, 471, 40 S. Ct. 580 (1920) and 258 U.S. 574, 581, 42 S. Ct. 406 (1922). That interest does not make them indispensable

parties (compare **Georgia** v. **Pennsylvania R. Co.**, 324 U.S. 439, 463-64, 65 S. Ct. 716 (1945); nor does their absence defeat the exclusive jurisdiction of the Supreme Court, 28 U.S.C. § 1251 (a) (1), to determine the controversy which has arisen between the States.

There is no necessity that the William Buchanan Foundation be joined as a party to this action, and the existing controversy between the two States can be finally resolved without such joinder being required.

California v. **Southern Pacific Co.**, 157 U.S. 229, 15 S. Ct. 591 (1895), cited by the defendants, has no application here. That was an action brough by the State of California against a citizen of another State and involved an extremely complex controversy over title to certain waterfront land in Oakland, California. Under the specific circumstances of the case the Court concluded that the various land rights were so inextricably interwoven that the City of Oakland and the Oakland Water Front Company were parties without whose presence the Court should not proceed. The cause of action was entirely different in its nature from that alleged in the present case; the position of the respective parties was different. Moreover, the controversy there was not, like the present one, within the exclusive jurisdiction of the Supreme Court; it was clear that the State of California had a judicial remedy readily available in another forum.

II.

THE DEFENDANTS HAVE RAISED VARIOUS QUESTIONS CONCERNING THE LEGAL CONSEQUENCES WHICH WOULD RESULT IF THE WILLIAM BUCHANAN FOUNDATION WERE A PARTY TO THIS ACTION. THE WILLIAM

BUCHANAN FOUNDATION IS NOT A PARTY TO THIS ACTION, AND ACCORDINGLY THESE QUESTIONS ARE NOT RELEVANT TO DECIDING THE MOTION FOR LEAVE TO FILE THE COMPLAINT.

In their return and supporting brief the defendants have sought to raise a number of questions concerning the legal consequences which would result if the William Buchanan Foundation were a party to this action. These questions could each be dealt with if they were ever to arise in this proceeding. But at the present time there is a simple response to them all. The William Buchanan Foundation is not a party to this proceeding. The parties are the State of Arkansas, as complainant, and the State of Texas and its Attorney General as defendants. The Court would be canvassing an issue wholly hypothetical and abstract, were it to consider what the situation might be if the William Buchanan Foundation were also a party. Accordingly these questions are not relevant to the motion before the Court for leave to file the complaint.

It may be noted in passing, however, that the prior rulings of this Court indicate that no jurisdictional problems would arise if the William Buchanan Foundation were to become an additional party. Thus in **Texas v. Florida**, 306 U.S. 398, 405, 59 S. Ct. 563 (1939) the Court held that:

> "The present suit is between states, and the other jurisdictional requirements being satisfied, the individual parties whose presence is necessary or proper for the determination of the case or controversy between the states are properly made parties defendant."

See also **Oklahoma v. Texas**, 253 U.S. 465, 471, 40 S. Ct. 580 (1920) and 258 U.S. 574, 581, 42 S. Ct. 406 (1922);

Kentucky v. Indiana, 281 U.S. 163, 173-74, 50 S. Ct. 275 (1930).

III.

NO BASIS EXISTS FOR DENYING LEAVE TO FILE THE COMPLAINT AS A MATTER OF SOUND EQUITABLE DISCRETION. MOREOVER, TO DENY LEAVE ON SUCH GROUNDS WOULD BE TO UNDERMINE THE ACTION OF CONGRESS IN VESTING EXCLUSIVE JURISDICTION IN THE SUPREME COURT.

The defendants in their return and supporting brief have suggested that some factors exist which might make it appropriate, as a matter of sound equitable discretion, for this Court to decline to exercise its jurisdiction in this case. In view of the grave injury being inflicted upon the State of Arkansas as a result of the unjustified and unlawful actions of the State of Texas, it is believed that an assessment of equitable factors would require this Court to assume jurisdiction over the controversy promptly, even if it were a controversy in which the State of Arkansas could also look for relief against the State of Texas in some other forum.

But this controversy is wholly unlike the cases in which this Court has determined, on discretionary grounds, that the complainant State should be remitted to another forum. **Massachusetts** v. **Missouri**, 308 U.S. 1, 17-20, 60 S. Ct. 39 (1939); compare **Georgia** v. **Chattanooga**, 264 U.S. 472, 44 S. Ct. 369 (1924); **Oklahoma** v. **Cook**, 304 U.S. 387, 58 S. Ct. 954 (1938). Those have all been cases where the complainant State sought to bring an original action in the Supreme Court against citizens of another State; and in such cases the Supreme Court is given "original but not exclusive" juris-

diction. 28 U.S.C. § 1251 (b) (3). The present controversy between the State of Arkansas and the State of Texas, on the other hand, is a controversy between two States, and the Judicial Code expressly provides that the original jurisdiction of the Supreme Court shall be "exclusive" in "all controversies between two or more States". 28 U.S.C. § 1251 (a) (1). In the light of this statutuory direction, it would be an abuse of discretion for this Court to decline to entertain a justiciable case or controversy which, like this one, has arisen between two States. As the Court stated in **Dyer** v. **Sims**, 341 U.S. 22, 28, 71 S. Ct. 557 (1951):

> "A State cannot be its own ultimate judge in a controversy with a sister State. To determine the nature and scope of obligations as between States, whether they arise through the legislative means of compact or the 'federal common law' governing interstate controversies (**Hinderlider** v. **La Plata Co.**, 304 U.S. 92, 110), is the function and duty of the Supreme Court of the Nation."

IV.

ARGUMENTS CONCERNING THE PRECISE SCOPE OF RELIEF WHICH SHOULD BE GRANTED ARE NOT RELEVANT TO DECIDING THE MOTION FOR LEAVE TO FILE THE COMPLAINT.

The defendants in their return and supporting brief have suggested, as a possible ground for this Court to decline to exercise its jurisdiction, that the granting of injunctive relief to the State of Arkansas would be contrary to 28 U.S.C. § 2283, which reads as follows:

> "A court of the United States may not grant an injunction to stay proceedings in a State court ex-

> cept as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

Even if it be assumed that this statutory provision is applicable to original actions in the Supreme Court, it is the position of the State of Arkansas that the complaint in the present case makes a sufficient showing that injunctive relief by the Supreme Court is "necessary in aid of its jurisdiction", in order to protect the exclusive jurisdiction vested in the Supreme Court by law. Accordingly, the prayer for injunctive relief is consistent with this statute.

But apart from the prayer for injunctive relief, the complaint likewise prays for a decree sustaining the rights of the State of Arkansas, as against the adverse actions and contentions of the defendants, and for such other and further relief as the Court may deem proper. The justiciable case and controversy set forth in the complaint becomes no less a case or controversy because the Court might, in the end, determine that injunctive relief is not required. As the Court stated in **Texas** v. **Florida**, 306 U.S. 398, 412, 59 S. Ct. 563 (1939):

> "While courts of equity in such suits may and frequently do give incidental relief by injunction to secure the full benefits of the adjudication and to terminate the litigation in a single suit, they are not bound to do so and their adjudication of the conflicting claims is not any the less effective as res judicata because not supplemented by injunction. We do not doubt that when the equity powers of the Court have been invoked it has power in its discretion to give such incidental relief by way of injunction as will make its determination the effective means of avoiding risk of loss to any of the parties by reason of the asserted multiple tax liability. But the plenary effect of its decision as res

judicata, and considerations of convenience in the levying of the tax by usual state procedure, make it unnecessary and undesirable that the Court should proceed beyond adjudication. The fact that the Court, for reasons of policy or convenience, does not exercise the power which it possesses and which has been traditionally exercised in like cases between private suitors does not deprive the suit of its character as a case or controversy cognizable by the Court in an original suit."

Leave to file the complaint should therefore be granted regardless of whether the precise scope of the relief ultimately granted would include an injunction (as the complainant believes it should), or would be limited to a specially framed decree which the Court might consider sufficient to vindicate the complainant's rights against the defendants (**Texas v. Florida**, supra; **Kentucky v. Indiana**, 281 U.S. 163, 175, 50 S. Ct. 275 and 281 U.S. 700, 50 S. Ct. 406 (1930)), or would take the form of a declaratory judgment pursuant to 28 U.S.C. § 2201.

CONCLUSION

For the foregoing reasons, as well as for those set forth in the motion for leave to file the complaint and in the complainant's brief in support thereof, this Court should grant leave to file the complaint and should proceed with the determination of the controversy. The State of Texas in the past has been given abundant opportunity to maintain in this Court original actions which that State deemed necessary to institute for the protection of its interests and the vindication of its legal rights. See, for example, **Texas v. Florida**, 306 U.S. 398, 59 S. Ct. 563 (1939); **Texas v. White**, 7 Wall.

700 (1868). In the present proceeding the State of Arkansas, having become involved in a clearly justiciable controversy with the State of Texas, believes it is entitled to a like oportunity.

Respectfully submitted,

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